In the High Court of Judicature for Rajasthan
Jaipur Bench
**
Cr. Msc. Petition No.2120/2007
Pankaj Govil ***Versus*** State & Indra Narain Saxena

Date of Order ::: 11/12/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Rajesh Goswami, for petitioner
Mr. Arun Sharma, Public Prosecutor

Instant petition U/s 482, CrPC has been filed by accused against order dt.06/08/07 whereby Chief Judl. Mag. Kota on final report in FIR-6/2007 PS Rampura (Kotwali (Kota) took cognizance of offence U/s 420, IPC, and summoned the petitioner by non-bailable warrant.

Grievance of petitioner is that summoning him through non-bailable warrant at the first stage looking to the nature of offence was not justified and to this extent, this order impugned required interference in inherent jurisdiction U/s 482, CrPC.

Public Prosecutor has not been able to support the order impugned in so far as it summons petitioner through non-bailable warrant. In **State of UP Vs Poosu (1976(3) SCR 1005** referred to in **Indermohan Vs. State UC** (**JT 2007(11) SC 499=(2007(V) AD (Cr)(SC) 369),** Apex Court observed ad infra:

“.. Broadly speaking, the court would

> take into account the various factors **such as the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, larger interest of the public and the State."**

In **Indermohan Vs. State of UC** (supra), it has been held that non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. Apex Court also observed ad infra:

> **"56... There cannot be any straight jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided."**

Taking note of nature of offence in the opinion of this Court, summoning the petitioner at first stage through nonbailable warrant without assigning reasons thereof, in no manner can be said to be justified.

Consequently, misc. petition is partly allowed alongwith stay petition; and the order dt.06/08/07 in so far it summons petitioner through non-bailable warrant stands converted into bailable warrants and if petitioner appears on or before

07/01/08 before the learned trial Court, and files bail application simultaneously, the same may be considered by the trial Court in accordance with law; and in case he fails to appear in terms of directions (supra), trial Court will be free to proceed under law to procure presence of petitioner.

(Ajay Rastogi), J.